

UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA

United States of America,

Plaintiff

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Festus Onyemeliosia Ebonka,

Defendant

Case No.: 2:22-cr-00156-CDS-NJK-1

Order Adopting Magistrate Judge's Report and Recommendation

[ECF No. 21, 26]

10 Defendant Festus Onyemaliosia Ebonka was charged with thirteen counts of healthcare
11 fraud after the grand jury returned a true bill for indictment. ECF No. 1. Ebonka moves to
12 dismiss that indictment arguing that: 1) evidence establishes the affirmative defense of
13 entrapment by estoppel; and 2) the government cannot prove *mens rea* to support a conviction for
14 fraud beyond a reasonable doubt. Mot. to Dismiss, ECF No. 21. The government opposes his
15 motion. Resp. Br., ECF No. 24.

16 United States Magistrate Judge Nancy J. Koppe recommends that I deny Ebonka's
17 motion to dismiss the indictment because granting Ebonka's motion would essentially amount
18 to granting Ebonka summary judgment in a criminal case. R&R, ECF No. 26. Judge Koppe finds
19 that to fully evaluate an entrapment-by-estoppel defense, the court would have to consider
20 evidence and facts beyond the face of the indictment. *Id.* at 3. But as the Ninth Circuit directed in
21 *United States v. Lyle*, a court considering a motion to dismiss an indictment is "bound by the four
22 corners of the indictment." *United States v. Lyle*, 742 F.3d 434, 436 (9th Cir. 2014) (quoting *United*
23 *States v. Boren*, 278 F.3d at 914 (9th Cir. 2002)). Thus, Judge Koppe concludes that dismissal of
24 the indictment is unwarranted in this case.

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1 Under this district's local rules, the deadline for Ebonka to object to the R&R was April
2 25, 2023. LR IB 3-1(a). As of the date of this order, no objections were filed, and the time for
3 filing an objection has elapsed. “[N]o review is required of a magistrate judge's report and
4 recommendation unless objections are filed.” *Schmidt v. Johnstone*, 263 F. Supp. 2d 1219, 1226 (D.
5 Ariz. 2003); *see also Thomas v. Arn*, 474 U.S. 140, 150 (1985); *United States v. Reyna-Tapia*, 328 F.3d
6 1114, 1121 (9th Cir. 2003). Because I find no error with Judge Koppe's conclusion that the court
7 should adhere to well-established Ninth Circuit case law, and with no objection filed, I adopt
8 the R&R in its entirety.

9 **Conclusion**

10 IT IS THEREFORE ORDERED that Judge Koppe's report and recommendation [ECF
11 No. 26] is ADOPTED in its entirety.

12 IT IS FURTHER ORDERED that defendant's motion to dismiss the indictment [ECF
13 No. 21] is DENIED.

14 DATED: May 25, 2023



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16 Cristina D. Silva
17 United States District Judge
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